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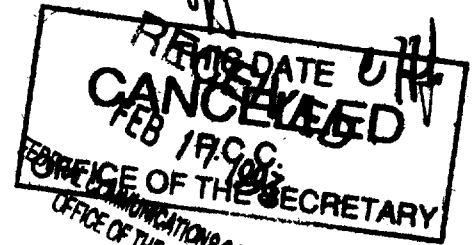
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FEB 25 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition
Act of 1992

Rate Regulation

NOTICE OF PROPOSED
RULEMAKING

MM Docket No. 92-266

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REPLY COMMENTS OF SQUARE D COMPANY

Square D Company ("Square D") through its attorneys,
hereby submits these reply comments in the above-captioned Notice
of Proposed Rulemaking ("NPRM").

In its initial remarks, Square D demonstrated that
competitive markets for subscriber-based equipment and
installation services exist and are growing, in virtually all
cable jurisdictions throughout the country. To preserve and
protect competition in these developing markets, however, Square
D urged the Commission to concentrate on two aspects of this
rulemaking: (1) the unbundling of equipment and installation
rates from service tiers; and (2) operator charges for connecting
additional outlets. Square D asserted in its comments, that the
unbundling of equipment and installation services is necessary to
give consumers the maximum flexibility to decide for themselves
how cable services should be delivered over their home

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electronics networks. (Square D Comments at 4.) Square D also urged the Commission to require that operator charges associated with the connection of additional outlets to be based on actual costs of the hardware and wiring involved, and to prohibit any service charges for the distribution of video signals to these multiple locations. (Square D Comments at 11.) Square D further explained that these proposals would not contribute to problems associated with theft of cable service or signal leakage over operator-provided facilities.

By adopting the foregoing proposals, Square D submits that the Commission will serve the Congressional mandate set forth in the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992") and, in the process, eliminate two of the major irritants confronting cable subscribers throughout the country.

I. Unbundled Equipment and Installation Charges Should be Based on Actual Costs.

Square D notes that the vast majority of parties submitting comments in this proceeding support the concept of "unbundling" on legal, technical and economic grounds. Indeed, only a handful of cable operators appear to remain opposed to the clear Congressional directive on this issue. Telephone operating companies, for example, favor the unbundling of cable services and equipment for the same economic reasons which forced them to unbundle competitive CPE from their monopoly services more than a

decade ago.^{1/} States and localities favor unbundling because it promises lower rates for subscribers and wider penetration of cable services.^{2/} Even most cable operators now appear willing to accept the reality that unbundling is a sound regulatory goal that will confer benefits on subscribers and operators alike.^{3/}

The only remaining dispute over unbundling seems to deal primarily with the issue of what equipment offerings should be regulated (i.e., equipment used to receive basic vs. non-basic service) and what cost methodology should be employed (i.e., actual costs vs. reasonable rates). For political and economic reasons, Square D favors equipment rates based on actual costs regardless of the type of underlying service provided. The arguments that Congress intended a different rate methodology to apply, depending on whether the subscriber is taking basic or non-basic services, ring hollow.

^{1/} See Bell Atlantic Comments at 10-11; Bell South Comments at 19; GTE Service Corporation Comments at 13; NYNEX Telephone Company Comments at 11; Pacific Telesis Group Comments at 5.

^{2/} See e.g., Attorney General for State of Connecticut Comments at 11-12; Dade County, Florida Comments at 10; Miami Beach, Florida Comments at 11; Mayor of New Bradford, Massachusetts Comments at 5; Village of Schaumburg, Illinois Comments at 9; State of Minnesota Comments at 14-15; City of Tallahassee, Florida at 3; Town of Williamstown, North Carolina Comments at 27 et seq.; See also Municipal Franchising Authorities Comments at 19.

^{3/} See e.g., Cablevision Comments at 9; Cole, Raywid & Braverman (representing various cable entities) Comments at 32; Cox Cable Comments at 33; Intermedia Partners Comments at 22-23; National Cable Television Associate Comments at 47.

As several parties openly admit, nearly all subscriber decoders are capable of delivering both basic and non-basic services. Therefore, using an "underlying service" test, as advocated by several operators, leads to the following scenario. A subscriber to basic tier service is charged for its multi-usage equipment based on rates determined by actual costs; as that subscriber migrates to a cable programming tier its equipment rates would also change based on a "reasonableness" cost standard; and eventually, as pay programming services are elected, a still different, and presumably higher, equipment rate would apply.^{4/} Square D submits that such a scenario is ludicrous on its face. Moreover, it lacks any economic justification, will be virtually impossible for operators (and regulators) to implement and, most important of all, will serve only to irritate and confuse a subscriber base that is already wary of cable rate hikes. For such multi-usage equipment, the only logical solution is to set rates based on actual costs regardless of the service or program tier for which such equipment is, or might be, used.

Square D reiterates its view that whatever rules are adopted, the Commission must ensure, above all else, that competition in the equipment and installation service market

^{4/} Some operators have argued that equipment used for non-basic programming is outside of the Commission's regulatory authority. See e.g., Newhouse Broadcasting Comments at 27.

(including maintenance)^{5/} is preserved and protected from possible abuses by cable operators. This means that cable operators must be prevented from setting rates that are either too high or too low,^{6/} and that subscribers must be made aware of the competitive choices that are available under the law.^{7/}

II. Additional Outlets Should Have No "Service Component."

As noted in Square D's initial remarks, the issue of additional outlet charges has been a particularly thorny one for home electronic network vendors. Even when such charges are reasonably based, subscriber opposition is considerable for the simple reason that extra charges (including charges for remotes and converter boxes) are perceived as "nickel and diming" by operators. Because of this, some operators have begun offering "whole house" service packages, heralded by many as the cable

^{5/} Square D believes that cost-based maintenance services by operators should be allowed. This would be similar to the situation involving telephone companies which provide maintenance services for custom-installed wiring and equipment.

^{6/} Equipment charges that are too high, as in the case of descramblers where competitive supply may not be possible, results in price gouging that discourages subscribers from wiring their homes for additional outlets and ultimately stifles the development of home electronic networks. Prices that are too low, such as those that result from cross-subsidized services, injure existing competition and discourages new market entry.

^{7/} Itemized billing to subscribers is one means of ensuring that they are made aware of competitively-supplied equipment and installation services. See CEG/EIA at 9.

offerings of the future, to increase customer satisfaction.^{8/} Inherent in the "whole house" concept is the notion that cable service -- whether basic, tiered or per program -- is paid for only once by the subscriber for distribution throughout its residence. Simply put, this means that no service charges are, or can be, applied for additional outlets regardless of the underlying service.

Square D submits that it is no small coincidence that subscribers (and some forward-thinking operators) are embracing the "whole house" service concept at the same time that Congress is mandating additional outlet connections be unbundled from service charges. As the Cable Act of 1992 makes clear, additional outlet charges are to be based solely on their actual costs of installation which includes wiring, equipment and labor; the Act implies nothing more.^{2/}

Indeed, under the Congressional scheme, there simply is no economic justification for operators to levy a "service component" for additional outlet connections as some would

^{8/} Intermedia Partners references this concept in its comments and requests the Commission to permit such offerings "for which there is no direct charge for AOs." Intermedia Partners Comments at 26. See also NCTA Comments at 47. Square D supports the "whole house" concept, provided the packages offered to subscribers are based on unbundled service tiers and equipment charges.

^{2/} 47 U.S.C. § 623(b)(3)(B).

contend.^{10/} Once a cable system is in place, the cost of delivering service to the home is the same whether one or 1,000 outlets are activated. The only thing that varies is the cost of bringing the additional outlets into service -- costs which Square D fully agrees should be recoverable by whatever entity provides such connections. Even if one were to assume that some cable systems are pre-engineered to service multiple outlets,^{11/} these costs must necessarily be recovered through basic service charges since it cannot be assured that such "additional outlet engineering" will ever be utilized by subscribers or that any given subscriber would be charged its fair share of those overall costs.

Regardless of the analytical model -- legal, technical or economic -- the results are the same; subscribers who add outlets should pay only for the actual costs of installation and equipment. If the cable operator is not involved in providing the additional outlets, the subscriber pays nothing for the right to receive services through those outlets. Any other scheme unfairly saddles subscribers with phantom or arbitrary costs and impedes their ability to utilize and enjoy paid-for cable services within their own residences.

^{10/} See Newhouse Broadcasting Comments at 28.

^{11/} See e.g., Cablevision Comments at 13, n. 20; Newhouse Broadcasting Comments at 28 n. 61.


CONCLUSION.

Based on the foregoing, Square D requests the Commission adopt the proposals and policies set forth herein.

February 11, 1993

Respectfully submitted,

SQUARE D COMPANY



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